

1 Michele Ballard Miller (SBN 104198)  
mbm@millerlawgroup.com  
2 Lisa C. Hamasaki (SBN 197628)  
lch@millerlawgroup.com  
3 Katherine L. Kettler (SBN 231586)  
klk@millerlawgroup.com  
4 MILLER LAW GROUP  
A Professional Corporation  
5 500 Sansome Street, Suite 400  
San Francisco, CA 94111  
6 Tel. (415) 464-4300  
Fax (415) 464-4336  
7

8 Attorneys for Defendant  
AT&T UMBRELLA BENEFIT PLAN NO. 1  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 LOUIS J. VELA,

14 Plaintiff,

15 v.  
16

17 AT&T UMBRELLA BENEFIT PLAN NO. 1,  
18  
19 Defendant.  
20

Case No.: CV 08 1575 MMC

**DEFENDANT'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

Complaint filed: March 21, 2008  
FAC filed: May 14, 2008

21 Defendant AT&T UMBRELLA BENEFIT PLAN NO. 1 (hereafter "Defendant")  
22 hereby answers Plaintiff LOUIS J. VELA'S First Amended Complaint (hereafter "Complaint")  
23 as follows:  
24

25 Defendant generally denies each and every allegation in the Complaint, except  
26 those expressly admitted below.  
27  
28

1           1.     Answering Paragraph 1 of Plaintiff's Complaint, Defendant admits each  
2 and every allegation contained in that paragraph.

3  
4           2.     Answering Paragraph 2 of Plaintiff's Complaint, Defendant admits that  
5 venue is proper as to where the Plan was administered, but denies the allegation that any  
6 breach occurred.

7  
8           3.     Answering Paragraph 3 of Plaintiff's Complaint, Defendant is without  
9 sufficient knowledge and information as to where Plaintiff resides or resided "at all relevant  
10 times," and on that basis denies this allegation.

11  
12           4.     Answering Paragraph 4 of Plaintiff's Complaint, Defendant admits that  
13 until November 2005, the program under which Plaintiff was eligible to apply for LTD  
14 benefits was the SBC Disability Income Plan. The SBC Disability Plan became the AT&T  
15 Disability Income Plan (the "Plan") effective November 2005. Defendant admits that  
16 selected pages of a copy of the Summary Plan Description are attached as Exhibit A to  
17 Plaintiff's Complaint. Defendant denies each and every remaining allegation contained in  
18 Paragraph 4.

19  
20           5.     Answering Paragraph 5 of Plaintiff's Complaint, Defendant admits that  
21 that Sedgwick Claims Management Services, Inc. ("Sedgwick") is the claims administrator  
22 for the Plan and that until March 1, 2006, the Sedgwick employees who worked on claims  
23 for disability benefits under the Plan worked in a unit of Sedgwick known as SBC Medical  
24 Absence and Accommodation Research Team ("SMAART"). Defendant denies that the  
25 Plan was administered "at plaintiff's place of work at SBC" as Plaintiff worked for Pacific Bell  
26 Telephone Company ("Pacific Bell").

1           6.     Answering Paragraph 6 of Plaintiff's Complaint, Defendant denies that  
2 "AT&T and SBC merged, and AT&T now controls the SBC Plan at issue." Defendant admits  
3 that AT&T Inc. is the Plan Administrator. Defendant admits that Sedgwick is the claims  
4 administrator for the Plan and that effective March 1, 2006, the name of the unit of  
5 Sedgwick employees who work on claims for disability benefits under the Plan was changed  
6 from SMAART to the AT&T Integrated Disability Service Center ("AT&T IDSC").  
7

8           7.     Answering Paragraph 7 of Plaintiff's Complaint, Defendant admits that  
9 AT&T Umbrella Benefit Plan No. 1 is the proper defendant in this action. Defendant denies  
10 each and every remaining allegation contained in Paragraph 7.  
11

12           8.     Answering Paragraph 8 of Plaintiff's Complaint, Defendant denies each  
13 and every allegation contained in Paragraph 8. There is only one defendant named in  
14 Plaintiff's Complaint.  
15

16           9.     Answering Paragraph 9 of Plaintiff's Complaint, Defendant denies each  
17 and every allegation contained in Paragraph 9. There is only one defendant and no "Doe"  
18 defendants named in Plaintiff's Complaint.  
19

20           10.    Answering Paragraph 10 of Plaintiff's Complaint, Defendant admits that  
21 on June 16, 2000 Plaintiff began working for Pacific Bell Telephone Company ("Pacific Bell")  
22 as a Network Sales Specialist. Defendant denies each and every remaining allegation of  
23 Paragraph 10.  
24

25           11.    Answering Paragraph 11 of Plaintiff's Complaint, Defendant admits that  
26 Plaintiff was promoted to Sales Manager by Pacific Bell effective July 1, 2001. Defendant  
27 denies each and every remaining allegation contained in Paragraph 11.  
28

1           12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant admits the  
2 allegations contained in Paragraph 12.

3           13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant admits that  
4 Mr. Vela stopped working on July 8, 2002. Defendant denies each and every remaining  
5 allegation contained in Paragraph 13.  
6

7           14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant denies that  
8 "SBC" approved benefits – Sedgwick administered Plaintiff's disability claim, not "SBC."  
9 Defendant admits that Sedgwick approved benefits on August 2, 2002 effective July 15,  
10 2002. Defendant denies each and every remaining allegation contained in Paragraph 14.  
11

12           15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant admits that  
13 Plaintiff remained on short term disability until March 18, 2003. Defendant denies each and  
14 every remaining allegation contained in Paragraph 15.  
15

16           16. Answering Paragraph 16 of Plaintiff's Complaint, Defendant admits  
17 each and every allegation contained in Paragraph 16.  
18

19           17. Answering Paragraph 17 of Plaintiff's Complaint, Defendant admits  
20 each and every allegation contained in Paragraph 17.  
21

22           18. Answering Paragraph 18 of Plaintiff's Complaint, Defendant denies that  
23 "SBC" denied long term disability benefits – Sedgwick administered Plaintiff's disability  
24 claim, not "SBC." Defendant admits each and every remaining allegation contained in  
25 Paragraph 18.  
26  
27  
28

1           19. Answering Paragraph 19 of Plaintiff's Complaint, Defendant is without  
2 sufficient knowledge and information as to Plaintiff's state of mind and communications with  
3 Dr. Wenokur, and on that basis denies each and every allegation contained in Paragraph  
4 19.

5           20. Answering Paragraph 20 of Plaintiff's Complaint, Defendant denies that  
6 "SBC" offered Plaintiff a position. Plaintiff was employed by Pacific Bell. Defendant admits  
7 each and every remaining allegation contained in Paragraph 20.

8  
9           21. Answering Paragraph 21 of Plaintiff's Complaint, Defendant admits that  
10 Plaintiff returned to work on November 17, 2003. Defendant denies each and every  
11 remaining allegation contained in Paragraph 21.

12  
13           22. Answering Paragraph 22 of Plaintiff's Complaint, Defendant is without  
14 sufficient knowledge and information and on that basis denies each and every allegation  
15 contained in Paragraph 22.

16  
17           23. Answering Paragraph 23 of Plaintiff's Complaint, Defendant denies that  
18 "SBC" took any action – Plaintiff did not work for "SBC." Defendant admits that Plaintiff's  
19 first day of absence was January 12, 2004, and that Pacific Bell placed Plaintiff on a paid  
20 administrative leave. Defendant denies each and every remaining allegation contained in  
21 Paragraph 23.

22  
23           24. Answering Paragraph 24 of Plaintiff's Complaint, Defendant admits  
24 each and every allegation contained in Paragraph 24.

25  
26           25. Answering Paragraph 25 of Plaintiff's Complaint, Defendant denies that  
27 an examining physician concluded anything. Defendant admits that Plaintiff was sent for a  
28 Fitness for Duty evaluation with a Board-certified physician through ValueOptions on

1 January 9, 2004. The medical records speak for themselves concerning any conclusions,  
2 and Defendant denies the allegations to the extent that Plaintiff's allegations purport to  
3 characterize, paraphrase or summarize statements or information contained in these  
4 documents. Defendant admits each and every remaining allegation contained in Paragraph  
5 25.

6  
7 26. Answering Paragraph 26 of Plaintiff's Complaint, Defendant denies that  
8 "SBC" approved LTD benefits for Plaintiff. Sedgwick administered Plaintiff's claim for long  
9 term disability ("LTD") benefits. Defendant admits that Sedgwick notified Plaintiff on March  
10 18, 2004 that he was approved for LTD benefits effective March 2, 2004. Defendant denies  
11 each and every remaining allegation contained in Paragraph 26.

12  
13 27. Answering Paragraph 27 of Plaintiff's Complaint, Defendant is without  
14 sufficient knowledge and information as to Plaintiff's "hope and plan," and on that basis  
15 denies the allegations contained in the second sentence of Paragraph 27. Defendant  
16 admits the remaining allegations contained in Paragraph 27.

17  
18 28. Answering Paragraph 28 of Plaintiff's Complaint, Defendant admits that  
19 the paragraph quotes a portion of the Plan definition of "total disability for a long-term  
20 disability" albeit with a minor error in the quotation.

21  
22 29. Answering Paragraph 29 of Plaintiff's Complaint, Defendant denies the  
23 allegations regarding "SBC" -- Sedgwick administered Plaintiff's disability claim, not SBC.  
24 Defendant is without sufficient information and knowledge as to what Plaintiff intends with  
25 his temporal allegations "at the time of his disability" and "at the time" and on this basis  
26 denies those allegations as vague. Defendant admits that, to the extent Plaintiff was eligible  
27 and approved for LTD benefits under the Plan, the Plan provided Plaintiff with 60% earnings  
28 protection. Defendant admits that Sedgwick recorded Plaintiff's monthly salary as

1 \$7,702.58. Defendant admits that Sedgwick calculated Plaintiff's benefit to be  
2 \$4,621.55/month. Defendant denies each and every remaining allegation contained in  
3 Paragraph 29.

4  
5 30. Answering Paragraph 30 of Plaintiff's Complaint, Defendant denies  
6 each and every allegation contained in Paragraph 30. The Plan sets forth additional  
7 obligations determining any continuing payment of Plan benefits.

8  
9 31. Answering Paragraph 31 of Plaintiff's Complaint, Defendant denies that  
10 "SBC" maintained a file – Sedgwick administered Plaintiff's disability claim, not SBC. The  
11 documents referred to speak for themselves, and Defendant denies Plaintiff's allegations  
12 contained in this Paragraph to the extent that those allegations purport to characterize,  
13 paraphrase or summarize statements or information contained in these documents.  
14 Defendant admits that Sedgwick maintained a disability claim file on Plaintiff's disability  
15 claim. The medical records and other documents in the claim file speak for themselves.  
16 Defendant denies each and every remaining allegation contained in Paragraph 31.

17  
18 32. Answering Paragraph 32 of Plaintiff's Complaint, Defendant denies that  
19 "SBC" recorded a "progress report" -- Sedgwick administered Plaintiff's disability claim, not  
20 SBC. Defendant denies that Dr. Rogers' "report listed symptoms consistent with his earlier  
21 reports." The medical records referred to speak for themselves, and Defendant denies  
22 Plaintiff's allegations contained in this Paragraph to the extent that those allegations purport  
23 to characterize, paraphrase or summarize statements or information contained in these  
24 documents. Defendant denies each and every remaining allegation contained in Paragraph  
25 32.

26  
27 33. Answering Paragraph 33 of Plaintiff's Complaint, Defendant denies that  
28 "SBC" recorded a progress report – Sedgwick administered Plaintiff's disability claim, not

1 SBC. The medical records referred to speak for themselves, and Defendant denies  
2 Plaintiff's allegations contained in this Paragraph to the extent that those allegations purport  
3 to characterize, paraphrase or summarize statements or information contained in these  
4 documents. Defendant denies that there was a "progress report." Defendant admits that on  
5 August 23, 2004, Sedgwick recorded notes from Dr. Wenokur, including the partial note  
6 quoted in the Complaint dated 4/9/04 "Problems with concentration and focus . . . ."  
7 Defendant denies each and every remaining allegation contained in Paragraph 33.

8  
9 34. Answering Paragraph 34 of Plaintiff's Complaint, Defendant denies that  
10 "SBC" recorded "progress reports" – Sedgwick administered Plaintiff's disability claim, not  
11 SBC. The medical records referred to speak for themselves, and Defendant denies  
12 Plaintiff's allegations contained in this Paragraph to the extent that those allegations purport  
13 to characterize, paraphrase or summarize statements or information contained in these  
14 documents. Defendant denies that there were "progress reports." Defendant admits that on  
15 February 10, 2005, Sedgwick documented information regarding Plaintiff, but Defendant is  
16 without sufficient information and knowledge to admit or deny that Drs. Wenokur and  
17 Rogers were the sources of the information, especially as the notes repeatedly reference  
18 "she" as the source of the information and appear to be referring to Plaintiff's wife, or that  
19 the information is accurate or correct, and on that basis denies that these physicians are the  
20 source of this information and denies the accuracy of the underlying facts asserted in these  
21 allegations. Defendant denies that the notes indicate "severe mood swings." Defendant  
22 denies each and every remaining allegation contained in Paragraph 34.

23  
24 35. Answering Paragraph 35 of Plaintiff's Complaint, Defendant denies that  
25 "SBC" recorded a "progress report" – Sedgwick administered Plaintiff's disability claim, not  
26 SBC. The medical records referred to speak for themselves, and Defendant denies  
27 Plaintiff's allegations contained in this Paragraph to the extent that those allegations purport  
28 to characterize, paraphrase or summarize statements or information contained in these



1 documents. Defendant denies that there was a “progress report.” Defendant admits that on  
2 March 3, 2005, Sedgwick recorded medical notes received from Dr. Rogers, covering a  
3 period from August 18, 2004 through February 16, 2005. Defendant admits the notes state  
4 “reported memory problems.” Defendant denies each and every remaining allegation  
5 contained in Paragraph 35.

6  
7 36. Answering Paragraph 36 of Plaintiff’s Complaint, Defendant denies that  
8 “SBC” determined anything – Sedgwick administered Plaintiff’s disability claim, not SBC.  
9 The claims notes referred to speak for themselves, and Defendant denies Plaintiff’s  
10 allegations contained in this Paragraph to the extent that those allegations purport to  
11 characterize, paraphrase or summarize statements or information contained in these  
12 documents. Defendant admits that Sedgwick documented Plaintiff’s LTD status as  
13 “open/approved.”

14  
15 37. Answering Paragraph 37 of Plaintiff’s Complaint, Defendant denies that  
16 “SBC” recorded a progress report – Sedgwick administered Plaintiff’s disability claim, not  
17 SBC. The medical records referred to speak for themselves, and Defendant denies  
18 Plaintiff’s allegations contained in this Paragraph to the extent that those allegations purport  
19 to characterize, paraphrase or summarize statements or information contained in these  
20 documents. Defendant denies that there was a “progress report.” Defendant admits that on  
21 December 7, 2005, Sedgwick recorded a letter received from Dr. Rogers. Defendant admits  
22 that the letter indicated Plaintiff would “stay in bed” for several days. Defendant denies  
23 each and every remaining allegation contained in Paragraph 37, as the allegations misstate  
24 the contents of the communication.

25  
26 38. Answering Paragraph 38 of Plaintiff’s Complaint, Defendant denies that  
27 “SBC” recorded a progress report -- Sedgwick administered Plaintiff’s disability claim, not  
28 SBC. The medical records referred to speak for themselves, and Defendant denies

1 Plaintiff's allegations contained in this Paragraph to the extent that those allegations purport  
2 to characterize, paraphrase or summarize statements or information contained in these  
3 documents. Defendant denies that there was a "progress report." Defendant admits that on  
4 December 29, 2005, Sedgwick recorded a fax from Dr. Wenokur, received on December 23,  
5 2005. Defendant admits each and every remaining allegation contained in Paragraph 38.

6  
7 39. Answering Paragraph 39 of Plaintiff's Complaint, Defendant denies that  
8 "SBC" recorded chart notes it had previously requested -- Sedgwick administered Plaintiff's  
9 disability claim, not SBC. The medical records referred to speak for themselves, and  
10 Defendant denies Plaintiff's allegations contained in this Paragraph to the extent that those  
11 allegations purport to characterize, paraphrase or summarize statements or information  
12 contained in these documents. Defendant denies that the chart notes were "previously  
13 requested." Defendant admits that on January 18, 2006, Sedgwick recorded chart notes  
14 from Dr. Wenokur for the period from February 11, 2005 to December 21, 2005. Defendant  
15 denies that the "notes indicated manic-depressive behavior with various degrees of  
16 severity."

17  
18 40. Answering the first three sentences of Paragraph 40 of Plaintiff's  
19 Complaint, Defendant denies that "SBC" recorded notes -- Sedgwick administered Plaintiff's  
20 disability claim, not SBC. Defendant admits that on October 12, 2006, Sedgwick recorded a  
21 fax received from Dr. Wenokur. The medical records and other documents in the claim file  
22 speak for themselves, and Defendant denies Plaintiff's allegations contained in this  
23 Paragraph to the extent that those allegations purport to characterize, paraphrase or  
24 summarize statements or information contained in these documents. Defendant denies that  
25 the "notes indicated . . . some improvement in mood." Answering the fourth sentence of  
26 Paragraph 40 of Plaintiff's Complaint, Defendant is without sufficient knowledge and  
27 information and on that basis denies each and every allegation contained in the fourth  
28 sentence of Paragraph 40 of Plaintiff's Complaint. Defendant admits that Sedgwick

1 received a fax from Dr. Rogers on October 6, 2006 and asserts that the document speaks  
2 for itself. Defendant admits that a portion of the communication is correctly quoted in this  
3 Paragraph, apart from minor typos. Defendant denies the remaining allegations contained  
4 in Paragraph 40.

5  
6 41. Answering Paragraph 41 of Plaintiff's Complaint, Defendant admits that  
7 file notes reflect a call back from Plaintiff's wife, and state "she asked about RTW."  
8 Defendant is without sufficient knowledge and information as to Plaintiff's "hope and plan",  
9 and on that basis denies the second sentence of Paragraph 41.

10  
11 42. Answering Paragraph 42 of Plaintiff's Complaint, Defendant denies  
12 each and every allegation regarding "SBC" -- Sedgwick administered Plaintiff's disability  
13 claim and communicated with Plaintiff concerning his claim, not SBC. The documents  
14 referred to speak for themselves, and Defendant denies Plaintiff's allegations contained in  
15 this Paragraph to the extent that those allegations purport to characterize, paraphrase or  
16 summarize statements or information contained in these documents. Defendant admits that  
17 the case manager's notes state that Plaintiff was told "we would look at overall capacity to  
18 earn" among other conditions, although the rest of the last sentence of these notes state:  
19 "Advised he is allowed to work and receive benefits, but that we would look at overall  
20 capacity to earn, and whether he still would meet definition of disability d/t work capacity. If  
21 he has the capacity to earn more, he may not meet definition." Defendant denies each and  
22 every remaining allegation contained in Paragraph 42.

23  
24 43. Answering Paragraph 43 of Plaintiff's Complaint, Defendant denies  
25 each and every allegation regarding "SBC" -- Sedgwick administered Plaintiff's disability  
26 claim and communicated with Plaintiff concerning his claim, not SBC. The documents  
27 referred to speak for themselves, and Defendant denies Plaintiff's allegations contained in  
28 this Paragraph to the extent that those allegations purport to characterize, paraphrase or

1 summarize statements or information contained in these documents. Defendant admits that  
2 on October 20, 2004, Sedgwick logged a telephone conversation with Plaintiff. Defendant  
3 admits that the Paragraph contains an accurate quotation from the call log, albeit with a  
4 minor error. Defendant admits each and every remaining allegation contained in Paragraph  
5 43.

6           44. Answering Paragraph 44 of Plaintiff's Complaint, Defendant denies  
7 each and every allegation regarding "SBC" – Sedgwick administered Plaintiff's disability  
8 claim and communicated with Plaintiff concerning his claim, not SBC. The documents  
9 referred to speak for themselves, and Defendant denies Plaintiff's allegations contained in  
10 this Paragraph to the extent that those allegations purport to characterize, paraphrase or  
11 summarize statements or information contained in these documents. Defendant admits that  
12 on November 18, 2004, Sedgwick noted that Plaintiff's benefit payments should be adjusted  
13 based on new information from a supervisor regarding base pay. Defendant denies that  
14 "SSDI benefits" were subtracted from Plaintiff's monthly gross payment; California SDI  
15 benefits were subtracted from Plaintiff's monthly gross payment. Defendant denies that an  
16 overpayment "resulted" from subtracting SDI benefits from Plaintiff's monthly gross  
17 payment. The overpayment resulted from a recalculation of Plaintiff's base pay. Defendant  
18 admits each and every remaining allegation contained in Paragraph 44.

19  
20           45. Answering Paragraph 45 of Plaintiff's Complaint, Defendant denies that  
21 "SBC discovered another overpayment" – Sedgwick administered Plaintiff's disability claim,  
22 not SBC. The documents referred to speak for themselves, and Defendant denies Plaintiff's  
23 allegations contained in this Paragraph to the extent that those allegations purport to  
24 characterize, paraphrase or summarize statements or information contained in these  
25 documents. Defendant admits that in May 2005 Sedgwick informed Plaintiff that it had  
26 received information from Allsup Inc. that Plaintiff had been awarded Social Security  
27 Disability ineffective September 1, 2004, resulting in a \$9,992.00 overpayment. Defendant  
28

1 denies each and every remaining allegation contained in Paragraph 45 of Plaintiff's  
2 Complaint.

3  
4 46. Answering Paragraph 46 of Plaintiff's Complaint, Defendant denies the  
5 allegations regarding "SBC" – Sedgwick administered Plaintiff's disability claim, not SBC.  
6 Defendant admits that on January 18, 2005, Sedgwick recorded a telephone conversation  
7 with Plaintiff's wife. The medical records and other documents in the claim file speak for  
8 themselves, and Defendant denies Plaintiff's allegations contained in this Paragraph to the  
9 extent that those allegations purport to characterize, paraphrase or summarize statements  
10 or information contained in these documents. Defendant denies that the notes reflect that  
11 Plaintiff had "changed doctors." Defendant admits that the notes reflect that Plaintiff's wife  
12 inquired whether changing doctors would jeopardize benefits. Defendant admits that this  
13 Paragraph accurately quotes a sentence fragment from the claim files notes, out of context.  
14 Defendant denies each and every remaining allegation contained in Paragraph 46.

15  
16 47. Answering Paragraph 47 of Plaintiff's Complaint, Defendant denies that  
17 Plaintiff's wife called "SBC" – Sedgwick administered Plaintiff's disability claim, not SBC.  
18 Defendant admits that on September 22, 2006, Sedgwick Case Manager Nayra Rosenston  
19 recorded telephone calls from Plaintiff's wife in which she stated that Plaintiff had started  
20 working at Home Depot and inquired about how much money Plaintiff could earn and still  
21 remain on LTD. The records in the claim file speak for themselves, and Defendant denies  
22 Plaintiff's allegations contained in this Paragraph to the extent that those allegations purport  
23 to characterize, paraphrase or summarize statements or information contained in these  
24 documents. Defendant denies each and every remaining allegation contained in Paragraph  
25 47.

26  
27 48. Answering Paragraph 48 of Plaintiff's Complaint, Defendant denies that  
28 "SBC" returned Plaintiff's wife's call – Sedgwick administered Plaintiff's claim, not SBC.

1 Defendant admits that the claim file notes indicate that on September 25, 2006, Sedgwick  
2 Case Manager Nayra Rosenston recorded that on September 22, 2006 she returned  
3 Plaintiff's wife's telephone call and indicated that she would check on what would happen if  
4 Plaintiff went over the allowed earnings and get back to her. The records in the claim file  
5 speak for themselves, and Defendant denies Plaintiff's allegations contained in this  
6 Paragraph to the extent that those allegations purport to characterize, paraphrase or  
7 summarize statements or information contained in these documents.

8  
9 49. Answering Paragraph 49 of Plaintiff's Complaint, Defendant denies that  
10 "SBC" called Plaintiff's wife – Sedgwick administered Plaintiff's disability claim, not SBC.  
11 Defendant admits that on October 4, 2006, Sedgwick Case Manager Nayra Rosenston  
12 recorded a telephone call, wherein she "reviewed with [Plaintiff's wife] the 75% amt that EE  
13 cannot exceed when combining earnings and LTD benefit; provided amt of \$1144.76 that is  
14 max that EE can earn." The records in the claim file speak for themselves, and Defendant  
15 denies Plaintiff's allegations contained in this Paragraph to the extent that those allegations  
16 purport to characterize, paraphrase or summarize statements or information contained in  
17 these documents. Defendant admits the calculations set forth in the third and fourth  
18 sentences of Paragraph 49 of Plaintiff's Complaint, although those calculations are not set  
19 forth in the referenced claim notes. Defendant denies the fifth sentence of Paragraph 49 of  
20 Plaintiff's Complaint, as Plaintiff can earn whatever he wants to earn. Defendant denies that  
21 allegations set forth in the sixth and seventh sentences of Paragraph 49 of Plaintiff's  
22 Complaint. Defendant denies each and every remaining allegation contained in Paragraph  
23 49 of Plaintiff's Complaint.

24  
25 50. Answering Paragraph 50 of Plaintiff's Complaint, Defendant is without  
26 sufficient knowledge and information as to Plaintiff's state of mind and professed  
27 motivations to admit or deny the allegations contained in Paragraph 50, and on that basis  
28 denies each and every allegation contained in Paragraph 50 of Plaintiff's Complaint.

1           51. Answering the first sentence of Paragraph 51 of Plaintiff's Complaint,  
2 Defendant admits that Plaintiff worked in the plumbing department of Home Depot.  
3 Defendant denies that Plaintiff's employment at Home Depot began on September 5, 2006,  
4 as there is a dispute in the administrative record as to Plaintiff's start date. Answering the  
5 second sentence of Paragraph 51 of Plaintiff's Complaint, Defendant admits that Plaintiff's  
6 basic wage rate was \$11.50.

7  
8           52. Answering Paragraph 52 of Plaintiff's Complaint, Defendant denies that  
9 Plaintiff's employment at Home Depot began on September 5, 2006, as there is a dispute in  
10 the administrative record as to Plaintiff's start date. Defendant is without sufficient  
11 information and knowledge as to whether Plaintiff "worked" and on that basis denies that  
12 allegation, but otherwise admits each and every remaining allegation contained in  
13 Paragraph 52. The Home Depot earnings statement referenced speaks for itself.

14  
15           53. Answering Paragraph 53 of Plaintiff's Complaint, Defendant is without  
16 sufficient information and knowledge as to whether Plaintiff "worked" and on that basis  
17 denies that allegation, but otherwise admits each and every allegation contained in  
18 Paragraph 53. The Home Depot earnings statement referenced speaks for itself.

19  
20           54. Answering Paragraph 54 of Plaintiff's Complaint, Defendant is without  
21 sufficient information and knowledge as to whether Plaintiff "worked" and on that basis  
22 denies that allegation, but otherwise admits each and every allegation contained in  
23 Paragraph 54. The Home Depot earnings statement referenced speaks for itself.

24  
25           55. Answering Paragraph 55 of Plaintiff's Complaint, Defendant is without  
26 sufficient information and knowledge concerning Plaintiff's reference to "pay stubs" and on  
27 that basis denies these allegations. Assuming Plaintiff is referring to the Home Depot  
28



1 earnings statement for Plaintiff, the Home Depot earnings statement referenced speaks for  
2 itself.

3  
4 56. Answering the first sentence of Paragraph 56 of Plaintiff's Complaint,  
5 Defendant is without sufficient knowledge and information and on that basis denies each  
6 and every allegation contained in the first sentence of Paragraph 56. Answering the second  
7 sentence of Paragraph 56 of Plaintiff's Complaint, Defendant admits that Dr. Rogers' March  
8 19, 2007 note indicates that Plaintiff's "critical attitudes and verbalizations about other  
9 employees who he judges as not as motivated as he result in interpersonal tension in the  
10 work place" and his "impulse control problems make it close to impossible for him to cope  
11 with difficult or belligerent customers." Defendant admits that Dr. Rogers' March 18, 2007  
12 note indicates that Plaintiff was fired from Home Depot for "beating up a sales  
13 representative in the store." Defendant denies each and every remaining allegation  
14 contained in Paragraph 56 of Plaintiff's Complaint.

15  
16 57. Answering Paragraph 57 of Plaintiff's Complaint, Defendant denies  
17 each and every allegation regarding "SBC" – Sedgwick administered Plaintiff's disability  
18 claim, not SBC. Defendant admits that the denial letter from LTD Case Manager Nayra  
19 Rosenston of Sedgwick to Plaintiff was dated November 16, 2006, and indicated that  
20 Plaintiff's benefits were denied effective November 1, 2006. The document referred to  
21 speaks for itself, and Defendant admits that the document contains Ms. Rosenston's  
22 statements and representations on behalf of Sedgwick, but denies Plaintiff's allegations  
23 contained in this Paragraph to the extent that those allegations purport to characterize,  
24 paraphrase or summarize statements contained in this document. Defendant denies that  
25 the notes state that Plaintiff was "thus ineligible to receive LTC benefits." Defendant denies  
26 that the allegations accurately quote the contents of the November 16, 2006 letter from Ms.  
27 Rosenston.



1           58. Answering Paragraph 58 of Plaintiff's Complaint, Defendant admits that  
2 Plaintiff appealed the denial of long term disability benefits via correspondence to the AT&T  
3 IDSC Quality Review Unit dated February 20, 2007. The document referred to speaks for  
4 itself, and Defendant admits that the document contains Plaintiff's statements and  
5 representations in that letter, but denies Plaintiff's allegations contained in this Paragraph to  
6 the extent that those allegations purport to characterize, paraphrase or summarize Plaintiff's  
7 statements in this document. Defendant denies all allegations concerning "SBC" --  
8 Sedgwick administered Plaintiff's disability claim, not SBC. Defendant denies each and  
9 every remaining allegation contained in Paragraph 58 of Plaintiff's Complaint.

10  
11           59. Answering Paragraph 59 of Plaintiff's Complaint, Defendant denies all  
12 allegations regarding "SBC" – Sedgwick administered Plaintiff's disability claim, not SBC.  
13 Defendant admits that in correspondence to Plaintiff dated April 12, 2007, Angela DeBolt,  
14 Appeal Specialist, AT&T IDSC Quality Review Unit informed Plaintiff that the Unit  
15 determined to uphold the denial of benefits. The document referred to speaks for itself, and  
16 Defendant denies Plaintiff's allegations contained in this Paragraph to the extent that those  
17 allegations purport to characterize, paraphrase or summarize statements set forth in this  
18 document. Defendant admits that Plaintiff's allegations accurately quote from a portion of  
19 the document, with two minor typos in the Complaint. Defendant denies each and every  
20 remaining allegation contained in Paragraph 59 of the Complaint.

21  
22           60. Answering Paragraph 60 of Plaintiff's Complaint, Defendant admits that  
23 Plaintiff realleges the allegations of his Complaint.

24  
25           61. Answering Paragraph 61 of Plaintiff's Complaint, Defendant admits  
26 each and every allegation contained in Paragraph 61.

1           62. Answering Paragraph 62 of Plaintiff's Complaint, Defendant denies that  
2 Plaintiff was a "covered participant" in "or beneficiary of" the Plan. Rather, Plaintiff was  
3 potentially "eligible" to participate in the Plan, subject to its terms, conditions and  
4 requirements. Defendant is without sufficient knowledge and information on which to admit  
5 or deny Plaintiff's allegation concerning "her disability" and on that basis denies this  
6 allegation. Defendant denies that Plaintiff had a "disability."

7  
8           63. Answering Paragraph 63 of Plaintiff's Complaint, Defendant denies  
9 each and every allegation contained in Paragraph 63.

10  
11           64. Answering Paragraph 64 of Plaintiff's Complaint, Defendant denies  
12 each and every allegation contained in Paragraph 64.

13  
14           65. Answering Paragraph 65 of Plaintiff's Complaint, Defendant denies  
15 each and every allegation contained in Paragraph 65.

16  
17           66. Answering Paragraph 66 of Plaintiff's Complaint, Defendant admits  
18 each and every allegation contained in Paragraph 66.

19  
20           67. Answering Paragraph 67 of Plaintiff's Complaint, Defendant denies all  
21 allegations as to "SBC" – Plaintiff's claim was administered by Sedgwick, not SBC.  
22 Defendant denies that "SBC improperly denied benefits due to Mr. Vela's return to work."  
23 Defendant is without sufficient information and knowledge on which to admit or deny the  
24 remaining allegations contained in Paragraph 67 of the Complaint, and on that basis denies  
25 the remaining allegations contained in Paragraph 67 of Plaintiff's Complaint.

26  
27           68. Answering Paragraph 68 of Plaintiff's Complaint, Defendant denies all  
28 allegations as to "SBC" – Plaintiff's claim was administered by Sedgwick, not SBC.

1 Defendant denies that “[a]s a reward for taking these test steps in hopes to eventually return  
2 to work with SBC, SBC cut [Plaintiff’s] benefits after a 5-week stint with Home Depot.” In  
3 addition, Defendant is without sufficient knowledge and information of Plaintiff’s “hopes” on  
4 which admit or deny this allegation, and on that basis denies this allegation contained in the  
5 first sentence of this Paragraph. Furthermore, Defendant specifically denies the allegations  
6 that Plaintiff was to “return to work with SBC” as Plaintiff was employed by Pacific Bell.  
7 Defendant also denies the allegation that “SBC cut” benefits or made “statements” upon  
8 which Plaintiff allegedly relied. Plaintiff’s claim was administered by Sedgwick, not SBC.  
9 Defendant is without sufficient knowledge and information of Plaintiff’s state of mind or  
10 alleged “reliance” to admit or deny the second sentence of Paragraph 68, and on that basis  
11 denies this allegation. Defendant is without sufficient information or knowledge to admit or  
12 deny that Plaintiff worked at Home Depot for five weeks, as that issue is disputed, and on  
13 that basis denies this allegation. Defendant denies each and every remaining allegation  
14 contained in Paragraph 68.

15  
16 69. Answering Paragraph 69 of Plaintiff’s Complaint, Defendant denies  
17 each and every allegation contained in Paragraph 69.

18  
19 PRAYER

20  
21 1. Defendant denies the allegations contained in Paragraph 1 of Plaintiff’s  
22 prayer for relief, and deny that Plaintiff was injured or damaged in any sum, or at all.

23  
24 2. Defendant denies the allegations contained in Paragraph 2 of Plaintiff’s  
25 prayer for relief, and deny that Plaintiff was injured or damaged in any sum, or at all.

26  
27 3. Defendant denies the allegations contained in Paragraph 3 of Plaintiff’s  
28 prayer for relief, and deny that Plaintiff was injured or damaged in any sum, or at all.

**AFFIRMATIVE DEFENSES**

For and as a separate and affirmative defense to each and every claim for relief set forth in the Complaint, Defendant alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

Plaintiff's Complaint fails to allege facts sufficient to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Not Eligible for Benefits)**

Plaintiff's claims are barred in that Plaintiff is not eligible for benefits under the terms and conditions of the applicable disability plan.

**THIRD AFFIRMATIVE DEFENSE**

**(Good Faith)**

Defendant's actions or statements were based upon good, sufficient, and legal cause, upon reasonable grounds for belief in its truth and justification, and were taken or said in good faith and without malice.

///

///

///

**FOURTH AFFIRMATIVE DEFENSE**

**(Waiver and Estoppel)**

Plaintiff, by his acts and omissions, has waived and is estopped and barred from alleging the matters set forth in the Complaint.

**FIFTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

Defendant alleges that Plaintiff is barred from any relief by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

Plaintiff has failed to mitigate the damages alleged in the Complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Offset)**

Any award of benefits to Plaintiff should be offset by any other earnings, benefits and/or income received by Plaintiff (including but not limited to disability benefits, workers' compensation benefits and/or settlement monies, unemployment benefits, pension benefits, and/or benefits from the Social Security Administration or the State of California), and/or should be offset by any damages caused by Plaintiff to the Defendant, including any unjust enrichment to Plaintiff by virtue of fraud.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Attorneys' Fees)**

Defendant is entitled to its attorneys' fees pursuant to 29 U.S.C. § 1132(g) and/or Rule 11(c)(2), Federal Rules of Civil Procedure.

**NINTH AFFIRMATIVE DEFENSE**

**(Conduct In Accordance With the Plan)**

Defendant and its agents at all relevant times acted and conducted themselves in accordance with the documents and instruments governing the Plan insofar as such documents and instruments were and are consistent with the provisions of ERISA.

Defendant has not yet completed a thorough investigation and study or completed discovery of all facts and circumstances of the subject matter of the Complaint, and, accordingly, reserves the right to amend, modify, revise or supplement this General Denial, and to plead such further defenses and take such further actions as it may deem proper and necessary in its defense upon the completion of said investigation and study.

THEREFORE, Defendant demands judgment in its favor, costs of suit, and attorneys' fees, and all other proper relief.

Dated: June 20, 2008

MILLER LAW GROUP  
A Professional Corporation

By:                     /S/                      
Katherine L. Kettler  
Attorneys for Defendant AT&T  
UMBRELLA BENEFIT PLAN NO. 1.